

U.S. DEPARTMENT OF LABOR Employment and Training Administration Washington, D.C. 20213	CLASSIFICATION
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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 17-87

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK *DJ Kulick*  
 Administrator  
 for Regional Management

SUBJECT : Questions and Answers on the Effects  
 of Strikes and Lockouts on Eligibility  
 for Trade Readjustment Allowances

1. Purpose. To provide guidance to State Employment Security Agencies (SESAs) regarding the effects of strikes and lockouts on eligibility for Trade Readjustment Allowances (TRA) and other trade adjustment assistance (TAA) (training and job search and relocation allowances).

2. References. Trade Act of 1974 as amended (P.L. 93-618, P.L. 97-35, P.L. 98-120, P.L. 98-369, and P.L. 99-272).

3. Background. A number of SESAs have raised questions about the effects of labor disputes on trade adjustment assistance and particularly the effects on TRA eligibility. While answers have been provided in memoranda to some of the Regional Offices, this directive consolidates the questions asked and provides further guidance to all SESAs.

4. Questions and Answers.

(1) Q. May a worker establish eligibility for TAA based on a separation which is due to a strike or lockout?

A. No. The Trade Act requires that a worker must have a lack of work separation from adversely affected employment to qualify for TRA or other TAA benefits. Refer to Section 247(2) of the Trade Act which defines an

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"adversely affected worker". Since a separation due to a strike or lockout does not meet the lack of work separation criterion, a worker may not establish TAA eligibility based on such separation.

- (2) Q. If a worker who was laid off because of a strike or lockout returns to work after the labor dispute has ended and is told by the employer that there is no longer any work for him or her, may the worker establish TAA eligibility?
  - A. Yes. This separation is due to lack of work not a strike or lockout. However, all other requirements, including the wage qualifying requirements for TRA, must also be met with respect to the separation.
- (3) Q. If State law allows Unemployment Insurance (UI) benefits to be paid in case of a lockout, may TRA also be paid?
  - A. TRA eligibility (or any other TAA entitlement) may not be established based on a separation due to a lockout. However, a worker who had previously established TRA eligibility, returned to work and was subsequently out of work because of lack of work due to a lockout, could reopen a TRA claim if there were remaining weeks of eligibility and under the State law the lockout is not disqualifying for UI purposes.
- (4) Q. If a worker is out of work because of a strike or lockout and decides to enter training, may the training be approved for TAA purposes?
  - A. Training may be approved only if there is a lack of work separation to establish eligibility. However, a worker who is out of work because of a labor dispute and has previously established eligibility for TAA benefits might be approved for TAA training if the work the individual was performing before the labor dispute was not "suitable." Eligibility for basic or additional weeks of TRA depends on the disqualification provisions of State law relating to a strike or lockout.

- (5) Q. If a worker was on strike for over seven months, returned to work and is laid off within two weeks because of lack of work, could the individual meet the wage qualifying requirements to receive TRA?
- A. No. The worker must have 26 or more wage qualifying weeks (including qualifying weeks of leave) within the 52-week period ending with the week of separation to meet the qualifying requirements of Section 231(a)(2) of the Act.
- (6) Q. Is a worker who was on leave at the time a labor dispute occurred but is unable to return to work because of the labor dispute eligible for TAA benefits?
- A. No. There is not a lack of work separation to establish eligibility.
- (7) Q. Where a worker receives a notice of layoff after the settlement of a strike in which he/she participated, what is the date of separation for purposes of the worker's eligibility for TRA?
- A. The date of separation is the effective date of the notice for TRA purposes. A worker on strike remains in employment status and is not separated from employment until actual separating action is taken by the employer or the worker. Whether a separating action taken by an employer is a layoff for lack of work for TAA purposes is a fact to be determined in each case. The fact that a worker is laid off after a strike must be coupled with evidence that the layoff was due to lack of work in adversely affected employment to establish that the worker is an adversely affected worker.
- (8) Q. Would an individual who was receiving TRA while in approved training be disqualified from receiving further TRA payments if, while a labor dispute was in progress, the individual was offered and refused employment in an establishment where jobs are vacant because of the labor dispute?

- A. No. The individual could not be denied TRA by a State on these facts without violating the labor standards in Section 3304(a)(5)(A) of the Federal Unemployment Tax Act. This section requires that compensation not be denied to an otherwise eligible individual for refusing to accept new work if the position offered is vacant due directly to a strike, lockout or other labor dispute. Denial of TRA in this situation would also be inconsistent with Section 3304(a)(8) of the FUTA, and Section 236(e) of the Trade Act of 1974.
- (9) Q. If a plant is permanently closed down immediately following the settlement of a labor dispute, what is the date of separation for those workers who participated in the labor dispute?
- A. The separation date would be the date the employment was actually terminated. However, a separation caused by a labor dispute does not constitute a TAA qualifying separation; there must be a layoff because of lack of work in adversely affected unemployment.
- (10) Q. May a worker not participating in a labor dispute qualify for TRA where the worker is laid off because his/her employer supplies a firm involved in the labor dispute?
- A. A worker who is laid off because his/her employer is no longer able to supply the firm involved in a labor dispute may experience a lack of work separation for which he/she could qualify for TAA if the worker group of which he/she is a member has been certified as eligible to apply for TAA.

5. Action Required. SESA administrators should distribute the contents of this UIPL to appropriate staff.

6. Inquiries. Direct questions to the appropriate Regional Office.